

REMARKS

This amendment is responsive to the Final Office Action of April 27, 2009. Reconsideration and allowance of claims 8-10 and 18 are requested.

The Present Amendment Should Be Entered

The present amendment should be entered as simplified the issues on appeal. The present amendment raises no issues which would require further search or consideration.

The present amendment proposes to place claim 8 in independent form including all of the subject matter of its parent claim 1. Because a dependent claim is read as including all of the subject matter of its parent claim, it is submitted that this amendment to claim 8 does not change its scope and would require no further search or consideration.

Dependent claim 9 has been placed in independent form including all of the subject matter of its parent claims 1 and 8. Again, placing a dependent claim in independent form including all of the subject matter of its parent claims raises no issues that would require further search or consideration.

Claims 1, 4, 5, 11, 12, and 15 have been cancelled, which reduces the issues on appeal.

Claim 11 should be entered as raising no issues that would require further search or consideration. Claim 11 has been fully searched and rejected by the Examiner on the exact same grounds as claim 9. Accordingly, it is submitted that the Examiner has already searched and considered the limitations of claim 11 and found that the same references are applicable as claim 9. Further, it is submitted that claim 11 requires no further search or consideration because it depends from claim 9 which, it is submitted, is allowable for the reasons set forth below.

Further, for the reasons set forth below, it is submitted that this amendment should be entered as placing the application in condition for allowance.

The Office Action

Claims 1, 4, 5, 8-13, and 18 stand rejected under 35 U.S.C. § 103 over Epperson (US 6,279,172) in view of Sundberg (US 5,655,227).

**The Claims Distinguish Patentably
Over the References of Record**

Claim 8 calls not only for an envelope in the shape of a 'T' but also enumerates the location of three pockets for three supplementary padding elements and the location of openings into such pockets.

By distinction, **Epperson** discloses a military helmet including a brow pad **30**, a rear pad **25a**, and a crown pad **50** suspended by straps. Thus, **Epperson** teaches that different types of padding should be provided for different parts of the helmet as may be appropriate to the expected impact to be received. Of these various and divergent types of pads, only the brow pad includes a pouch **31**. The pouch **31** is not T-shaped. To the contrary, the pouch design is used only in the brow pad area of the helmet. Moreover, **Epperson** discloses only a single pocket. Further, the flap **31a** covers an opening in an edge of the brow pad and not on an upper wall and not on an upper wall which contacts to lining fabric.

Sundberg fails to cure these shortcomings of **Epperson**. **Sundberg** discloses a T-shaped piece of foam which provides padding for the top and sides of a face mask for an ice hockey goal tender. **Sundberg** discloses the padding should be positioned differently than **Epperson** in order to accommodate the different type of impact which a hockey goalie may expect relative to the type of impact which might be expected by military personnel.

It is submitted that if one were to attempt to use the fair teachings of **Sundberg** in the helmet of **Epperson**, one would replace the brow pad, the crown pad, the rear pad, and the nape panel **40** with the T-shaped foam shaped element **1** of **Sundberg**. Such a helmet clearly would not meet the limitations of claim 8.

Moreover, even if **Sundberg** were to motivate **Epperson** to replace its inner padding elements with a T-shaped envelope, which it is submitted it does not, there is still no fair teaching or suggestion of defining the three pockets as defined in claim 8.

Accordingly, it is submitted that claim 8 distinguishes patentably over **Epperson** and **Sundberg**.

Claim 9 in addition to the three pockets set forth in claim 8, discussed above, claim 9 calls for a fourth pocket at the central junction of the three branches. It

is submitted that neither **Epperson** nor **Sundberg**, nor the combination thereof teaches or fairly suggests placing three pockets in each of the branches of a T-shaped element, much less placing a fourth pocket at a central junction of the three branches.

It is submitted that one viewing **Epperson** and **Sundberg** are not put in possession of the subject matter of claim 9. Rather, it is submitted that the extensive modifications set forth in claim 9 are not shown by either **Epperson** or **Sundberg** can only be made by using the present application for guidance.

Accordingly, it is submitted that claim 9 and claims 10 and 11 dependent therefrom distinguish patentably over the references of record.

Claim 18 calls for a helmet including a rigid shell and resident padding affixed to the shell. An envelope is mounted inside the resident padding. In **Epperson**, the pouch **31** is affixed directly to an inner helmet **21** which is connected to the outer helmet **20** by screws or adhesives. There is no resident padding disposed between the shell and the pouch **31**. **Sundberg** fails to cure this shortcoming of **Epperson**. In **Sundberg**, the T-shaped foam element is positioned directly in the shell **6** directly above the cheek pads **10**. Again, there is no resident padding affixed to the shell in **Sundberg**. Because neither **Epperson** nor **Sundberg** disclose a combination of a rigid shell, resident padding, and a T-shaped envelope, it is submitted that these claimed limitations are not shown or fairly taught by **Epperson**, **Sundberg**, or the combination thereof.

Claim 18 further calls for an envelope having a T-shape. **Epperson** has a pouch **31**, but it is not T-shaped. **Sundberg** has a T-shaped foam element **1**, but it is not a pouch. First, placing T-shaped padding in the helmet of **Epperson**, as the Examiner appears to suggest, would interfere with the straps associated with the crown piece **50** and the nape panel **40**. This interference would reduce or eliminate some of the functionality of the other impact resisting structures of **Epperson**. Accordingly, because such a modification would reduce or impair the effectiveness of **Epperson**, it is submitted that one of ordinary skill in the art would not be motivated to make such a modification.

Further, claim 18 calls for a plurality of supplemental deformable padding elements configured to be inserted through the access opening into the interior branches of the envelope. In **Epperson**, there is a single pad in the pouch **31**.

Analogously, **Sundberg** teaches that the T-shaped foam element **1** should be one piece. Thus, both **Epperson** and **Sundberg** teach against a plurality of padding elements disposed in a T-shaped envelope.

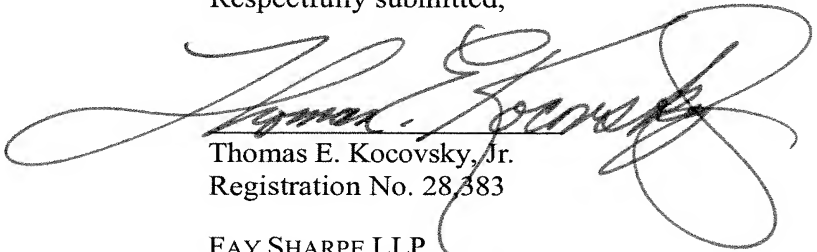
Further, claim 18 calls for an attachment structure which removably attaches the supplemental deformable padding elements to the interior of the envelope. **Epperson** does not disclose an attachment structure for attaching the brow pad in the pocket **31**. Rather, because the brow pad fills the pocket, it will not shift relative to the pocket, and an attachment structure would be superfluous. **Sundberg** neither addresses nor cures this shortcoming of **Epperson**.

CONCLUSION

For the reasons set forth above, it is submitted that claims 8-11 and 18 distinguish patentably and unobviously over the references of record. An early allowance of these claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Thomas E. Kocovsky, Jr.", is written over the typed name and registration number.

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